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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,119	02/10/2004	John D. Mountz	UAB-11703/22	5461
51279 7590 05/01/2007 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C. P.O. BOX 7021 TROY, MI 48007-7021			EXAMINER WEHBE, ANNE MARIE SABRINA	
			ART UNIT 1633	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

NOTICE OF NON-RESPONSIVE AMENDMENT

The reply filed on 2/22/07 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the applicant has canceled claim 9 and amended all remaining pending claims such that they do not read on the invention examined in the first office action mailed to applicants on 11/15/06. See 37 CFR 1.111. Claims 1-21 filed on 2/10/04 were all drawn to vectors comprising a nucleic acid encoding Fas 2 ligand and methods of using said vectors. These claims were deemed to represent a single invention, but were subject to election of species requirements for the genus of vectors, and the genus of transgenes embraced by the original claims. The claim amendment submitted on 2/22/07 amends all pending claims to now recite vectors comprising a nucleic acid encoding Fas ligand. The applicant states that this amendment was made to correct an "error" on their part. However, had additional claims drawn to compositions and methods comprising a nucleic acid encoding Fas ligand been presented along with the claims drawn to Fas 2 ligand, a restriction requirement between separately patentable and distinct inventions would have been made between compositions and methods comprising vectors encoding Fas ligand and compositions and methods comprising vectors encoding Fas 2 ligand based on the fact that Fas ligand and Fas 2 ligand are separate and distinct molecules with different physical, chemical, and functional properties such that a search for one would not be coextensive with a search for the other.

Please note that while the previous office action based on the original claims drawn to Fas 2 ligand indicated that neither the specification nor prior art provided a description or guidance for a "Fas 2 ligand" or "Fas ligand 2", the applicant's response states that "Fas ligand 2

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represents the FADD (Fas Associated Death Domain) protein that similarly functions in association with Fas to induce apoptosis. (Chinnaiyan, AM (1995) Cell 81: 505; Boldin, MP (1995); 270:7795; NCBI accession number NM 000043.)". While neither the Chinnaiyan nor Boldin references have been provided for the examiner's consideration, the applicant's statements support the conclusion that Fas ligand and "Fas ligand 2" are two separate and distinct proteins encoded by separate and distinct nucleic acids.

Newly amended claims 1-21 are therefore directed to an invention that is independent or distinct from the invention originally claimed. Since applicant has received an action on the merits for the originally presented invention, i.e. Fas 2 ligand, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, amended claims 1-21 are all withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since no claims remain following entry of this amendment which are drawn to the originally presented invention, this amendment and response are not responsive to the non-final action mailed on 11/15/06. It is further noted that the applicant's response to the rejections made in the 11/15/06 is also not fully responsive as the comments do not address the issues raised in regards to Fas 2 ligand but are instead focused on compositions and methods involving Fas ligand, subject matter which was not examined in the previous office action.

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, **the new technology center fax number is (571) 273-8300**. Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197.

Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

Dr. A.M.S. Wehbé

ANNE M. WEHBE' PH.D
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Anne M. Wehbé', with a long horizontal line extending to the right.